

Steven M. BESSETTE  
Appl. No. 10/014,797

Atty. Docket No. 4380-105

### REMARKS/ARGUMENTS

Claims 1, 7, 17, 20 and 140-145 are pending. Claims 2-6, 8-16, 18-19 and 21-139 have been canceled without prejudice or disclaimer of the subject matter they contain. In an effort to advance prosecution, claims 1, 7, 20 and 140-145 are amended to encompass infringing subject matter. Support for the claim amendments can be found in the specification at, *inter alia*, page 16, line 25 to page 18, line 4. The specification has been amended to correct obvious and/or inadvertent typographical error. No new matter has been added by the above amendments. By the amendments, Applicant does not acquiesce to the propriety of any of the Examiner's rejections and does not disclaim any subject matter to which Applicant is entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicant reserves the right to file continuing applications to cover disclosed subject matter not encompassed by the currently pending claims.

Applicant is grateful for the courtesies extended to the Applicant and the undersigned representative during the personal interview conducted on October 19, 2005. A separate record of the substance of the personal interview is incorporated within the paragraphs below.

### REJECTION UNDER 35 U.S.C. § 102(b)

The Office Action rejects claims 1, 7, 17 and 20 under 35 U.S.C. § 102(b) as being anticipated by DE 524 383 in view of Merck (Encyclopedia of chemicals, drugs and biologicals, 1996). DE 524 383 apparently has been cited for the reasons of record. Merck apparently has been cited to show that citronellal and limonene are found in lemon oil (see pages 393 and 938). Applicants respectfully traverse this rejection.

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The factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of a claimed invention. The *Kegel Co. v. AMF Bowling*, 127 F.3d 1420, 44 USPQ2d 1123 (Fed. Cir. 1997); *Gechter v. Davidson*, 116 F.3d 1454, 43 USPQ2d 1030 (Fed. Cir. 1997). There are significant differences between the presently claimed invention and the presently claimed invention within the meaning of 35 U.S.C. §102.

DE 524 383 discloses that rosemary oil and wintergreen oil are mixed with several other oils, such as linseed oil, anisole, turpentine oil, lemon oil, etc., to obtain a composition for combating cockroaches, bugs, etc. DE 524 383, however, does not disclose a pesticidal composition having the specific combination of features required by the presently claimed invention. In particular, neither DE 524 383 (nor Merck) teach a pesticidal composition consisting of an inert carrier and a pesticidally active ingredient, wherein the pesticidally active ingredient consists of rosemary oil and wintergreen oil. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

#### **REJECTION UNDER 35 U.S.C. § 103(a)**

The Office Action rejects claims 1, 7, 17, 20 and 140-145 under 35 U.S.C. § 103(a) as being unpatentable over DE 524 383 taken with Merck, the references by Inazuka et al. (182a), Watanabe et al., Dotolo (U.S. 4,379,168), Bessette et al. (U.S. 6,004,569) and Targosz (U.S. 5,496,857). The Office Action asserts that the cited documents disclose the use of various carriers or diluents in pesticidal compositions including mineral oil (DE 524 383) or citronellal (Watanabe et al.) or limonene and citronellal as components of lemon oil (DE 524 383 in view of Merck). Because these references do not teach the use of pesticidally acceptable carriers such as benzyl alcohol, safflower oil, soybean oil and sesame oil, the Office Action apparently relies on

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U.S. Patent No. 5,496,857 for teaching safflower oil, soybean oil, sesame oil and also mineral oil as components in pesticidal mixtures; U.S. Patent No. 4,379,168 for teaching benzyl alcohol and citronellal as components of pesticidal mixtures; and U.S. Pat. No. 6,004,569 for teaching the use of d-limonene as a component of pesticidal mixtures. Applicants respectfully traverse this rejection.

Applicant respectfully submits that it would not have been obvious to one having ordinary skill in the art reading the cited references at the time the claimed invention was made to add or to substitute any one of purported carrier(s) into the composition of the cited DE 524 383 to arrive at the presently claimed invention. None of the remaining cited references remedy the deficiencies of DE 524 383 by teaching or suggesting a pesticidal composition consisting of an inert carrier and an active ingredient, wherein the active ingredient consists of rosemary oil and wintergreen oil. DE 524 383 does not provide any suggestion or motivation to remove ingredients in the disclosed composition to arrive at the presently claimed invention. Moreover, the cited references teach compositions having components that are synergistic diluents, not inert carriers, as presently claimed. Thus, Applicant respectfully requests reconsideration and withdrawal of this rejection.

## CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Please grant any extension(s) of time deemed necessary for entry of this communication. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in

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the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

Date: February 21, 2006

By: [Signature]  
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (571) 273-8300 on the date indicated below, with a coversheet addressed to Commissioner for Patents, U.S. Patent and Trademark Office.

Date: February 21, 2006  
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